



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,351	01/30/2001	David Dodge	KOSIE-016XX	2577

7590 11/03/2005
BOURQUE & ASSOCIATES, P.A.
Suite 303
835 Hanover Street
Manchester, NH 03104

EXAMINER

ROSENBERG, LAURA B

ART UNIT	PAPER NUMBER
----------	--------------

3616

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/774,351	Applicant(s) DODGE, DAVID	
	Examiner Laura B. Rosenberg	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4,7,8,15,16,19-28,31-36,39,40 and 42-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 39,40,42,45 and 48 is/are allowed.
- 6) ☒ Claim(s) 3,4,7,8,15,16,19-24,31,32,43,44 and 46 is/are rejected.
- 7) ☒ Claim(s) 25-28,33-36 and 47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment filed 25 July 2005, in which claims 3, 4, 7, 8, 15, 16, 19-28, 31-36, 39, 42-44 were amended and claims 45-48 was added.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment of claims 43 and 44, in which there is only one plate that is both statically and pivotally mounted to the ski, or alternatively the embodiment argued on page 19 of the applicant's arguments dated 15 April 2005, in which there is only one plate and it is pivotally mounted to the ski without a second static plate, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

Art Unit: 3616

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because it does not provide support for the embodiment of claims 43 and 44, in which there is only one plate that is both statically and pivotally mounted to the ski, or alternatively the embodiment argued on page 19 of the applicant's arguments dated 15 April 2005, in which there is only one plate and it is pivotally mounted to the ski without a second static plate. Appropriate correction is required.

Claim Objections

4. Claims 4, 16, 22, 43-45, and 48 objected to because of the following informalities:

"ski or board" should be changed to --ski or ski board-- (claim 4, lines 2-3);

"ski or board" should be changed to --ski or ski board-- (claim 16, line 2);

"ski" should be changed to --ski or ski board-- (claim 22, line 2);

"are located" should be --is located-- (claim 32, line 10);

"allow" should be change to --allows-- (claim 43, line 11);

Art Unit: 3616

"allow" should be changed to --allows-- (claim 44, line 4);

"vertical pivot" should be changed to --vertical pivot means-- (claim 45, line 13);

"the boot" should be changed to --a boot-- (claim 45, line 21);

"the boot" should be changed to --a boot-- (claim 48, line 30).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 43 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to claim 43, it is unclear how the plate can be statically mounted to the ski and also have a first pivot means to pivotally attach the plate to the ski. Either the plate is statically mounted or pivotally mounted, but it can't be both. The applicant should avoid entering new matter. Further, per page 19 of the applicant's arguments dated 15 April 2005, applicant should avoid entering claims not drawn to the originally elected subject matter.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3616

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 3, 7, 15, 19, 23, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Freisinger et al. (4,779,891). Freisinger et al. disclose a safety ski binding (best seen in its entirety in figure 1) able to releasably secure a boot having a toe portion and a heel portion to a ski or ski board (not shown; column 2, line 68) comprising:

- Static base plate (including #1) capable of being fixedly attached to the ski or ski board
- Top plate (including #4) pivotally attached to the static base plate in a manner that permits pivotal movement of generally the entire top plate around a vertical axis (pivoted movement can be seen in figure 6)
- Laterally pivoting biasing means (including #2, 3, 5-10, 12, 24) for biasing the top plate towards a predetermined position (best seen in drawings; columns 3-4)
- Toe holding means (including #11-23) having a first vertical pivot means (for example, including #2, 2a or #5a, 6a) connected to the base plate (best seen in figures 1, 2, 6) and a second vertical pivot means (for example, including #7) connected to the top plate such that the toe holding means can pivot around the first vertical pivot means when a lateral force is applied to the toe portion of the boot causing lateral displacement of the top plate from the predetermined position and the release of the boot (best seen in figure 6; columns 3-4)
- Toe holding means (including #11-23) translatably connected to the top plate so that lateral force applied to the toe holding means is transferred to the top plate, having

Art Unit: 3616

toe safety release means which will release when the toe holding means is translated (column 3, line 33-column 4)

- Laterally pivoting biasing means has a first laterally displacing cam (for example, including #8) and a second laterally displacing cam (for example, including #9)

8. Claim 43 is rejected under 35 U.S.C. 102(b) as being anticipated by Pascal et al. (4,679,815). Pascal et al. disclose a binding (including #1, 3-5) able to mount a ski boot (for example, including #7) to a ski (including #2), the binding comprising:

- Plate (including #1) over which the ski boot may be placed (best seen in figure 1)
- First pivot means (including #3) to pivotally attach the plate to the ski
- Toe holding means (including #4) having a toe holding surface (for example, including front end #29)
- Second pivot means (including #37) to pivotally attach the toe holding means to the plate, wherein the second pivot means is located at the toe holding surface (best seen in figures 1-3) and allows the toe holding means to pivot around a vertical axis (best seen in figures 3, 4)

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3616

10. Claims 4, 16, 20, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freisinger et al. (4,779,891) in view of Teague, Jr. (4,944,237). In regards to claims 4 and 16, Freisinger et al. do not specifically disclose where on the static base plate the attachment is made between the static base plate and the ski or ski board. Teague, Jr. teach a ski binding (including #10) comprising a static base plate (including #160) and a movable top plate (including #16), wherein the static base plate is attached to a ski or ski board (including #14) in a central portion of the static base plate (for example, via bolts #36; best seen in figure 3). It would have been obvious to one skilled in the art at the time that the invention was made to modify the static base plate of Freisinger et al. with the attachment to the ski or ski board in a central portion of the static base plate of Teague, Jr. in order to properly attach the static base plate and prevent its removal when stress is added to the boot, ski, or binding. Further, locating the attachment in the central portion of the static base plate would have been an obvious matter of design choice.

In regards to claims 20 and 32, Freisinger et al. disclose laterally pivoting biasing means (including #2, 3, 5-10, 12, 24) having a first laterally displacing cam (for example, including #8) and a second laterally displacing cam (for example, including #9).

11. Claims 8, 21, 24, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freisinger et al. (4,779,891) in view of Horn (5,040,819). In regards to claims 21 and 46, Freisinger et al. do not specifically disclose the details of the rear portion of the ski binding and ski, including the heel holding means. Horn teaches a ski

Art Unit: 3616

binding (best seen in its entirety in figure 1) comprising a static base plate (including #4), a top pivotal plate (including #7), and a heel holding means (including #8) pivotally connected on the top plate (via vertical pivot #42) such that the heel holding means can pivot around a vertical axis and so that lateral force applied to the heel holding means or the heel portion of the boot would be transferred to the top plate which will cause the heel holding means to pivot and will cause lateral displacement from the predetermined position. It would have been obvious to one skilled in the art at the time that the invention was made to modify the ski binding of Freisinger et al. with the pivotally mounted heel holding means of Horn in order to provide an additional element of safety when a lateral force is applied to the heel holding means in allowing a pivotal movement of the heel holding means, which puts less stress on the foot and leg of the skier.

In regards to claims 8 and 24, Freisinger et al. disclose laterally pivoting biasing means (including #2, 3, 5-10, 12, 24) having a first laterally displacing cam (for example, including #8) and a second laterally displacing cam (for example, including #9).

12. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freisinger et al. (4,779,891) in view of Horn (5,040,819), further in view of Teague, Jr. (4,944,237). In regards to claim 22, Freisinger et al. do not specifically disclose where on the static base plate the attachment is made between the static base plate and the ski or ski board. Teague, Jr. teach a ski binding (including #10) comprising a static base plate (including #160) and a movable top plate (including #16), wherein the static base plate is attached to a ski or ski board (including #14) in a central portion of the

Art Unit: 3616

static base plate (for example, via bolts #36; best seen in figure 3). It would have been obvious to one skilled in the art at the time that the invention was made to modify the static base plate of Freisinger et al. with the attachment to the ski or ski board in a central portion of the static base plate of Teague, Jr. in order to properly attach the static base plate and prevent its removal when stress is added to the boot, ski, or binding. Further, locating the attachment in the central portion of the static base plate would have been an obvious matter of design choice.

Allowable Subject Matter

13. Claims 39, 40, 42, 45, and 48 are allowed.

14. Claims 25-28, 33-36, and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claim 44 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and the specification objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

16. Applicant's arguments with respect to claims 3, 4, 7, 8, 15, 16, 19-24, 31, 32, and 46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Berchtold et al. disclose a ski binding including a toe holder with 2 vertical pivot means and a plate pivotally mounted to the ski.

Lawrence discloses a ski binding including a toe holder with a vertical pivot means, a top plate, a bottom fixed plate, and movement of binding with regards to lateral forces on the boot or binding.

D'Alessio et al. disclose a ski binding including cams, a biasing mechanism, and vertical pivots.


Zoor discloses a ski binding including springs with adjustable bias and cam rollers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B. Rosenberg whose telephone number is (571) 272-6674. The examiner can normally be reached on Monday-Friday 7:00am-3:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Laura B Rosenberg
Patent Examiner
Art Unit 3616

LBR

 10/31/05
PAUL N. DICKSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600